

April 3, 2019

**Via ECF**

Hon. Katherine Polk Failla  
United States District Judge  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, NY 10007

Re: Withdrawal of Request in *Marcelino v. 374 Food, Inc. et al.*, 16-Civ-06287

Judge Failla:

As counsel for Defendants, I respectfully submit this letter withdrawing my request for a pre-motion conference prior to filing a motion to sanction Michael Ross and his associate pursuant to 28 U.S.C. § 1927. The cases cited by Mr. Ross in his affirmation today show that they did not vexatiously multiple the proceedings or intentionally abuse the judicial process even if Defendants maintain that they may not file notices of appearance to represent counsel that is, in turn, representing a party (as opposed to counsel that has already withdrawn from representing a party and is facing a sanctions motion).

Having researched disqualification extensively, I am surprised that there are cases where Mr. Ross has been allowed to appear as counsel to counsel representing a party and certainly made my motion in good faith (and continue to maintain that Mr. Ross and his associate should be disqualified from this case as long as Mr. Faillace represents a party). But I recognize that the cases cited in his affirmation obviate the argument that Mr. Ross and his associate violated 28 U.S.C. § 1927.

There are other issues to discuss at the pre-motion conference – the most important of which is whether Mr. Faillace will now withdraw from representing Plaintiff as he has retained counsel even prior to a motion for sanctions being made – so this is not a request to cancel that conference. I also intend to file my reply brief on the motion seeking Mr. Ross's and his associate's disqualification from this case prior to that conference. The intent of this letter is merely to inform the Court that I do not believe Mr. Ross and his association violated 28 U.S.C. § 1927 and will not file that motion.

Sincerely,  
/s/ Brian Lehman  
Brian Lehman  
Lehman LG LLC  
Counsel for Defendants

cc: all counsel by ECF